

**TOWN OF POLK**  
**BOARD OF ZONING APPEALS MINUTES**  
**December 30, 2008**  
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**I. Call Meeting to Order - 6:40 p.m. at the Town of Polk Town Hall, 3680 Hwy 60, Slinger.**

The meeting of the Board of Zoning Appeals was called to order by Zoning Secretary Judy Stephenson at 6:40 p.m. at 3680 Hwy 60, Slinger. Marilyn Mayer was nominated and elected *Acting* Chairman by unanimous vote.

**A. Official Meeting Notification -**

Notice of the Meeting was posted at the Town Hall, Highway View School and Cedar Lake Hills bulletin boards as well as faxed to the West Bend Daily News, Hartford Times Press, WBKV, WTKM, Milwaukee Journal Sentinel, and posted on the Town of Polk website. All interested parties were also notified.

**B. Roll Call** - Board members present: Marilyn Mayer, Karen Reiter, Mary Franz, Patrick Fehring, Rodney Bartlow, Building Inspector John Frey and Judy Stephenson, Zoning Secretary.

*Chairman Arthur Melius was absent.*

List of guests is attached. (See page        )

**C. Approval of Agenda** - A motion was made by Karen Reiter to approve the Agenda for December 30, 2008, seconded by Mary Franz. Motion carried unanimously by voice vote.

**D. Approval of Minutes - December 11, 2008-** A motion was made by Karen Reiter and seconded by Mary Franz to approve the minutes of December 11, 2008. Motion carried unanimously.

**II. Public Hearing - Calvin R. Martinez, 3840 State Hwy 60, Slinger.** Judy Stephenson, Zoning Secretary, read the Notice of Public Hearing for Calvin R. Martinez.

**A. Variance request to Section 3.03 (3) of the Zoning Ordinance of Title X of the Municipal Code of the Town of Polk to allow a variance of 51.4 ft. to construct a 48.4 ft. by 33.4 ft. addition to enclose an inground swimming pool 58.6 ft. from the right-of-way line instead of the required 110 ft. minimum front yard setback requirement. Tax Key #T9-0586, Section 15, Zoned A-1 Agriculture.**

Calvin Martinez stated that he wanted to enclose his swimming pool so it could be used 12 months out of the year instead of 3 months out of the year. John Aschenbrener, attorney for Calvin Martinez, stated that since the building materials were already there, he had reviewed the minutes from the variance meeting where the pool itself was approved to see if the enclosure might be included but it was not. He further stated that the enclosure would improve the property value, increase the taxes and will prohibit anyone from jumping into the pool from the roof, which had been a previous concern expressed by the ZBA. Attorney Aschenbrener stated

that the variance parameters are close to what was approved previously, if not the same, because the

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concrete extends outward, and there was no safety issue. He further stated that the Board had been out to the property at the hearing for the pool which was fairly recently so it was still fresh in their minds; since the variance was approved before and the numbers would be the same or almost the same and the safety issue would be eliminated.

Rodney Bartlow stated that the pool variance was June 2006. Judy Stephenson stated that the variance at that time was for a front yard setback of 62 ft. from the right of way line instead of the required 110 ft. Discussion was held Rodney Bartlow stated that it would appear that the 62 ft. variance was exceeded since the new variance request was for 58.6 ft. to place the outer wall on top of the pool that was to be built in accordance with the variance granted. John Frey stated that was an accurate representation. Mary Franz stated that it would then be reasonable for the Board to assume that the original variance was exceeded and is not in compliance with what this committee agreed upon. Calvin Martinez stated that when it was measured for the variance, it was from the closest part of the slab to the right of way line and that was 62 ft. Mary Franz stated that the new variance request was for 3.4 ft closer to the right of way. Mr. Martinez stated that the skirt of the pool measured 8 or 10 feet.

In response to the question from Mary Franz, John Frey stated that he had observed the project in progress with no building permit and he issued a stop work order. Karen Reiter asked Mr. Martinez why he did not apply for a variance and building permit. Mr. Martinez stated that he had stopped in the Town Hall and was told that he did not need a building permit for a pool cover. He further stated that John Frey was not there and he did not remember who he talked to. Mary Franz stated that as a matter of semantics she would not have thought a pool cover would consist of an enclosed structure addition. Discussion was held on size of the pool and distance to the right of way line. Mr. Martinez stated the difference might be from the overhang.

Mary Franz stated that the electric meter service for the house would be inside the pool enclosure and she did not believe it could be near a pool area with corrosive ability to the water. Mr. Martinez stated that they had called WE Energies and were told it is allowed because they have a new meter that allows it to be read from the road, without coming inside but he did not have anything in writing to that effect. John Frey stated he had talked to Brad *Gruenewald*, engineer at We Energies, and it would not be legal; it would be a safety factor should the company need to disconnect the power in case of a fire and also the chlorine and chemicals make a highly corrosive environment. Mr. Martinez stated that he wants to do things right and will have the meter moved to the outside.

Mary Franz stated that she observed pool fencing stacked up on the property when she visited it

and therefore surmises that Mr. Martinez had not planned on building an addition at the time of the pool variance. Discussion was held on the distance from the right of way to the built pool.

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Karen Reiter stated that at the time the house was built, prior to the zoning ordinance, the setback was 100 ft from the centerline of the road. Calvin Martinez stated that the distances stated on the two variances should have been the same and he may have made a mistake on the distances which would account for the approximately two foot difference between them. Karen Reiter asked if a floating slab could hold the proposed structure. John Frey stated that this addition requires a minimum of a 4 foot insulated frost foundation installed under the slab because the slab itself will heave with frost and go up and down and hinge where the addition walls and roof are attached to the house. Discussion was held. John Frey stated that even with an insulated 4 ft. frost foundation by excavating around three sides, the edge of the pool slab exposed to the weather would make the first 2 or 3 feet of floor inside the pool room icy, no matter how warm you keep the room; it would have to be retrofitted properly. He further stated that he had not seen any building plans or details and would want an architect to be involved in the retrofitting. Mr. Frey stated that at this point he did not have a lot of confidence in the owner or in the builder. He further stated that there are numerous structural building code violations and he would want a professional involved in architecture so that this situation and required retrofitting effort would comply with code and make this project work. Calvin Martinez stated that he had put the project in the Trendsetters company hands but he wanted to do whatever it would take to make the project work and to be sure it was done correctly. He further stated that he would get a professional involved and would move the meter to the outside.

Discussion was held. Judy Stephenson stated that a person could put a concrete slab on their property and would not require a variance and perhaps that is the reason for apparent distance differences. John Frey stated the they were comparing the variance that was granted a couple years ago with the variance that is being requested now and seeing a difference in numbers. He further stated that it appeared to him that the concrete that surrounded the pool may have gotten 2 or 2 1/2 ft. further out from the house than originally anticipated. Mr. Frey stated that the question is being asked now that he wants to add a structure that encloses this pool and they happen to have a setback that happens to be about 2 1/2 ft. less than the numbers that were granted. Marilyn Meyer stated that the pool itself is then in compliance with what was granted - it is the skirting. Mary Franz asked if the Board would have felt the same way about granting the variance if they knew there would be a request today for an enclosure. Patrick Fehring stated that if Mr. Martinez had asked for an enclosure at the same time as the pool, he himself would have said yes to it; based on the criteria in the form whether it was enclosed or not and since it would have eliminated the safety issue the Board was concerned about at the time and they would have been even more likely to approve it - it is the same footprint. He further stated that he understands that there does seem to be some difference in the numbers but he wonders if it is important to the board that the skirting of the pool comply with the previous variance granted; is

there enough skirting there that the 2.4 ft. could be cut off to make it comply with the variance and then shorten the sides of the structure so that it sits on the footprint that they originally intended with the original variance. Mr. Fehring stated that the skirting would probably have to

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be cut off to install the insulated frost foundation and then would be repoured.

Mary Franz asked if there had been any comments from Mr. Martinez neighbors. Judy Stephenson stated that no comments had been received.

Mary Franz then stated that she had verified that Mr. Martinez had intended to have a pool with a fence around it. The change of plans and the information he got from the builder has not put him in the right direction, she further stated. Ms. Franz stated that the Board would have given a variance request for a pool with enclosure a slightly different thought process because a pool alone would have been a surface issue whereas a structure is an elevation. Patrick Fehring stated that the criteria would have been the same. Mary Franz stated that now with the work stoppage order, he has a self imposed hardship. Marilyn Meyer stated that the board had to stick to the criteria none the less. She further stated that it does help with the safety issue but feels he should cut off the skirting to comply with the original variance which was granted. Further discussion was held.

Chairman Marilyn Mayer closed the Public Hearing and the Board considered the findings.

Mary Franz read the findings:

1. Preservation of intent - all agreed the use is permitted in the A-1 Agricultural District.
2. Exceptional circumstances - all agreed that the exceptional circumstances were the same as in the previous variance for the pool.
3. Economic Hardship and Self-Imposed Hardship Not Grounds for Variance - The majority agreed there is no self-imposed or economic hardship as per the previous variance where the hardship was created by the State highway change at the property line.
4. Preservation of Property Rights - The majority agreed that the variance would grant the same property rights as others.
5. Absence of Detriment - All agreed that there would be no detriment to other properties or public interest.

Discussion was held.

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**Decision** - The Board agreed to grant a variance equal to the variance granted for the pool at the June 22, 2006 meeting which was 48 ft. to construct a swimming pool 62 ft. from the right of way.

Motion by Patrick Fehring and seconded by Mary Franz to grant the variance with the same numbers as the original variance in regards to the amount of the setback and that the addition enclosure of the pool is built on the footprint as was originally intended by the first variance. A variance of 48 ft. as granted on June 22, 2006, which allowed construction of a pool and now an enclosure to be built 62 ft. from the right of way. Four Board members voted in favor with Karen Reiter voting against and the motion passed.

**IV. Adjournment**

Motion to adjourn made by Mary Franz and seconded by Rodney Bartlow. All voted in favor and the motion passed. The meeting was adjourned at 8:00 p.m.

Respectfully Submitted,

Judy Stephenson  
Zoning Secretary



